

Case No. A107095

COPY

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
nonprofit religious corporation,

Petitioner,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF MARIN,

Respondent.

GERALD ARMSTRONG,

Real Party in Interest.

Marin County Superior Court
Case No. 157680/152229,
Consolidated with
Case No. CV 021632

[Consolidated with Case No.
A107100]

FILED

DEC 08 2004

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____
DEPUTY

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI OR, IN THE ALTERNATIVE,
A WRIT OF MANDAMUS**

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To the Honorable Presiding Justice and the Honorable Associate
Justices of the Court of Appeal of the State of California:

Real party in interest Gerry Armstrong hereby respectfully submits
the following brief in opposition to petitioner Scientology organization's
petition for a writ of certiorari or, in the alternative, a writ of mandate
("petition").

INTRODUCTION

Armstrong has filed a respondent's brief ("RB, __") and respondent's appendix (RApp.) in the appeal part of this case, and he incorporates that brief herein in its totality.

He also incorporates herein by reference thereto the record on appeal in *Scientology v. Armstrong*, Case No. A075027, in this Court. That is a prior appeal in the same cases, and Armstrong cites to documents in that appeal using its number, A075027; e.g., appellants opening brief ("AOB-A075027, __") and clerk's transcript on appeal ("CT-A075027, __").

On May 20, 2004, Marin County Superior Court Judge Lynn Duryee issued the following order:

On April 9, 2004 the Court *sua sponte*, transferred all pending contempt matters in this case to this department for hearing and consolidated such matters with the trial set in *Church of Scientology v. Armstrong*, Case No. CV 021632. Plaintiff, Church of Scientology International appeared by its counsel, Andrew H. Wilson. Defendant Gerald Armstrong personally appeared with and was represented by his counsel, Ford Greene, Esq.

After hearing opening statements of the parties, taking judicial notice of the various pleadings and papers on file herein, and in the consolidated actions, *Church of Scientology International v. Armstrong*, Case No. 152229 and *Church of Scientology International v. Armstrong*, Case No. 157680, the Court made the following ruling:

The sentences imposed in the two prior contempt actions, in Marin Superior Court Case No. 152229/157680, which is consolidated herewith, are discharged upon entry of judgment against Armstrong herein.

On the order of contempt issued July 13, 2001, Armstrong is sentenced to five days in jail and a fine of \$1,000. The fine is concurrent with the judgment rendered in this action and the jail time is deemed served by Armstrong's appearance in Court.

Order Re Sentences for Contempt, Scientology's Exhibits in Support of Petition for Writ ("Exs.____:____"), Exs. 17:359-360.

The sentences in the two prior contempt actions, both imposed by former Marin Superior Court Judge Gary W. Thomas, were:

1. June 6, 1997, 2 days in jail and a fine of \$1000 for sending a declaration to U.S. District Court Judge Ronald Whyte in January 1997; Exs. 8:98-100.

2. February 20, 1998, 26 days in jail and a fine of \$2,600 for making 8 postings to the Internet in Canada and giving 5 interviews to European media, all during the period between September 2, 1997 and November 26, 1997. Exs. 9:103-107.

The sentence imposed by Judge Duryee was:

3. April 9, 2004, 5 days in jail and a fine of \$1000, for making 131 postings to the Internet in Canada, and giving two talks in Florida, all during the period between March 1, 1998 and July 11, 2000. RT, Exs. 16:63.

On July 13, 2001, Marin Superior Court Judge Vernon Smith, who had inherited the case after Judge Thomas retired, had found Armstrong in contempt for those acts but had not imposed a specific punishment. Exs. 13:141-144. Judge Duryee imposed her specific punishment at the April 9, 2004 trial, and then deemed

The 3 orders of contempt were for acts that Scientology claimed violated an injunction entered October 17, 1995 by Judge Thomas. Exs. 5:85-93.

The injunction was incorporated into a judgment entered by Judge Thomas against Armstrong on May 2, 1996. Exs. 6:94-96.

The injunction and judgment enforced Scientology's "contract" dated December 1986, which underlies and has given rise to several

Scientology v. Armstrong cases in Marin County, Los Angeles County and the First and Second District Courts of Appeal. Exs. 1:1-19.

The “contract” and documents and statements relating to it and to the litigation it has spawned have for years been copied, discussed and written about by government agencies and government personnel at all administrative levels, lawyers, judges, theologians, sociologists, media, ex-Scientologists, Scientologists and wogs¹ of every color, continent, faith or feature. Documents and commentary concerning the *Scientology v. Armstrong* saga have been available on the Internet for a decade, and Armstrong and his wife maintain a web site in Germany that archives and makes publicly available documents from his legal cases, including this one, as humanly possible, when they receive such documents. RApp. 166,167.

The “contract” was supposed to settle Armstrong’s lawsuit against Scientology, Los Angeles Superior Court Case No. C 420 153, for years of fraud, black propaganda² and other outrageous fair game.³ At the time of the “settlement” in December 1986, Armstrong was subjected to unholy pressure and trickery, and was touched by holiness itself, all of which brought him to sign Scientology’s “contract,” which had been sprung on him without warning. See, e.g., Armstrong’s report to the U.S. Department of Justice Civil Rights Division, dated February 16, 2004, RApp. 199-211.

On its face, the “contractual” terms that Scientology seeks to enforce are utterly one-sided, and deprive Armstrong of a multitude of rights and privileges secured to all U.S. citizens and residents by the U.S. Constitution and laws; including self-defense, due process, freedom of speech, religious exercise, association, the right to petition or even communicate with

¹ Re: “wogs,” see, e.g., Declaration of Gerald Armstrong, Exs.12:130-132.

² Re: Black propaganda or black PR, see, e.g., RB, n.1, 1,2.

³ Re: Fair Game, see, e.g., RB, n.2, 2.

governments, freedom from slavery, and the litigant's, clergyman-penitent and doctor-patient privileges.

Immediately following his signing of its "contract," Scientology continued its fair gaming of Armstrong as before, publishing and disseminating black PR on him around the world and filing court documents containing false sworn statements in an ongoing conspiracy to destroy his reputation. See, e.g., Sections C and D of "Armstrong's History with Scientology," in his appellant's opening brief in the earlier appeal. AOB-A075027,10-17.

Scientology's black propaganda/fair game campaign parallels and is part of the conspiracy, among the "beneficiaries" of Scientology's "contract," to destroy Armstrong's civil rights. These "beneficiaries" include every Scientology corporation, organization or group in the world, every Scientology-affiliated entity, and all of their directors, officers, employees, volunteers, representatives, agents, assigns and lawyers. Exs. 1:1-4.

Each action in any court that Scientology has taken to enforce the "contract's" terms since it was made, including what Scientology seeks with this petition, has been in furtherance of this ongoing conspiracy to strip Armstrong of his fundamental, law-given, and God-given, rights and privileges in unequivocal violation of U.S. Civil Rights criminal statutes, and render him the beneficiaries' defenseless slave and punching bag.

Scientology seeks by its petition to have this Court direct the Marin Superior Court to vacate its May 20, 2003 order re sentences and reinstate the 3 original sentences fining and jailing Armstrong, which Judge Duryee at trial and in her May 20 order has discharged.

Armstrong opposes Scientology's petition for the reasons stated in his respondent's brief and hereinafter.

ARGUMENT

I. The orders of contempt are unlawful and cannot lawfully be enforced.

A. The first contempt order unlawfully punishes Armstrong for properly reporting a crime and properly responding to a lawful subpoena.

Armstrong incorporates herein the totality of his statement of the case in his respondent's brief. RB, 8-31.

While living in San Anselmo, California, Armstrong obtained an Internet connection in January 1997, and soon thereafter discovered a web site containing a part of Scientology's response to a set of questions asked of it by the IRS in about 1992 in connection with Scientology's decades-long effort to obtain tax exemption. Scientology was granted the tax exemption it sought by the IRS in 1993. Scientology points out its religious and tax-exempt status in its petition.

Petitioner, Church of Scientology International, is a not-for-profit religious corporation, recognized by the Internal Revenue Service as a church exempt from taxation under 26 U.S.C. § 501 (c)(3).
Petition, 3.

The part of Scientology's response to the IRS that Armstrong discovered in January 1997 contained a number of pages (RApp. 4-7) of defamatory black propaganda attacking him, which shocked him deeply and caused him to decide to immediately leave California and go to Canada.

Armstrong is a Canadian citizen, had grown up in Canada, and believed that in Canada he would be free to communicate about this black PR, which he also considered fraud upon the IRS and the American people, and be free to communicate to defend himself and others from Scientology's ongoing and relentless attacks. Armstrong had been

Scientology's "Fair Game" target and victim since 1982. *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060 , 283 Cal.Rptr. 917.

In Canada, Scientology is known as a criminally convicted organization, and does not enjoy the same status and benefits as a tax exempt "religion" that it enjoys in the U.S. and also cannot use the justice system to harass and ruin its targets and victims as easily as Scientology can in the U.S. *R. v. Church of Scientology of Toronto*, Ontario Court of Appeal [1997] O.J. No. 1548, C13047 and C13207.

It has also now become clear to Armstrong, having lived in Canada several of the years since he left California in January 1997, that Scientology's "contractual" terms, which have been adjudged "enforceable" in California against him, could not lawfully be enforced in Canada against him, because they are an impermissible deprivation of Armstrong's fundamental freedoms in violation of the Canadian Charter of Rights and Freedoms.

PART I

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Enacted as Schedule B to the Canada Act, 1982.

It has also now become clear to Armstrong, having lived and traveled in Europe for several months since 1997, that Scientology's "contract" could not lawfully be enforced in Europe, being an impermissible deprivation of rights in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1998).

The governments signatory hereto, being members of the Council of Europe, Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

[...]

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community

with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

[...]

Article 11 – Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

[...]

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Convention for the Protection of Human Rights and Fundamental Freedoms
as amended by Protocol No. 11, 1998

Attorney Wilson, writing Scientology's petition, asserts that Armstrong left California at two different times and for two different reasons.

When CSI obtained a permanent injunction against further breaches, Armstrong fled the jurisdiction and moved to Canada, from where he openly and contemptuously disobeyed the court order and publicly defamed Superior Court Judge Gary Thomas by alleging that he had either been bribed or extorted by CSI.

Petition, 2.

On June 5, 1997, Judge Thomas issued an order of contempt, finding that Armstrong "willfully disobeyed the Order." []
Judge Thomas ordered that Armstrong pay a fine of \$1,000

and be confined in the County Jail for two days.[] Armstrong fled the jurisdiction, and on August 6, 1997, Judge Thomas issued a bench warrant for his arrest.

Petition, 6.

Both of these assertions by Wilson and Scientology are false. Scientology obtained its injunction on October 17, 1995. Armstrong moved to Canada in January 1997. He had been in Canada for months before Judge Thomas signed Scientology's first order of contempt in June 1997.

While it is true that Armstrong has found that being in Canada or Europe he cannot be persecuted as easily by Scientology with its injunction and contempt orders as he can be persecuted in the U.S., what brought him to leave California in January 1997, was, as he has stated in many declarations, the discovery of the black propaganda on him in Scientology's IRS submission on which its 1993 tax exemption, involving huge sums of money, is based. Exs.12:123-125.

The black PR in Scientology's filing with the IRS was meaningful to Armstrong beyond its false and defamatory content and the purpose for which that false and defamatory material was used, because Scientology had filed it with the IRS during a time when Scientology was also seeking to enforce its "contract" against Armstrong, which on its face prohibited him from communicating to the IRS about that black PR. Also shocking to Armstrong was the fact that Scientology had never produced this document to him in discovery in the case that resulted in Judge Thomas' onerous injunction, even though the document was of a type Scientology had been ordered to produce. Exs. 12:124.

On January 23, 1997, while still in San Anselmo and preparing to leave for Canada, Armstrong was served with a subpoena for production of documents by defendant Grady Ward in the case of *Religious Technology*

Center v. Ward, U.S. District Court for the Northern District of California, Case No. C-96-20207 RMW. RApp. 10,11.

On January 24, 1997, Armstrong received a fax letter from Andrew Wilson, attorney for Scientology in this petition and appeal, threatening Armstrong in relation to his being a subpoenaed witness. RApp.12.

Armstrong sent a declaration executed January 26, 1997 (RApp. 13-57) reporting Wilson's threat to Armstrong to the U.S. District Court Judge presiding in the *Ward* case, the Honorable Ronald M. Whyte.

68. On January 23, 1997 I received in the mail from Grady Ward a subpoena, a true and correct copy of which is attached hereto as Exhibit [T], for production of documents in his case.

69. On January 24 I received from attorney Andrew H. Wilson a fax letter, a true and correct copy of which is attached hereto as Exhibit [U], threatening prosecution in Armstrong IV if I provide documents to Mr. Ward pursuant to his subpoena. This letter is frightening to me, and supports why I am sending this declaration directly to the Court, and why the "settlement agreement" and the Thomas order are illegal. Mr. Ward does not have the time to wait for my testimony until Scientology's motion for protective order is heard before he must file this testimony. In my opinion, that is precisely why Mr. Wilson has sent his threat letter.

RApp. 55

On February 19, 1997 Scientology filed an application for an OSC re contempt against Armstrong, who was then in Canada, for sending his declaration to Judge Whyte. Scientology supported its application for an OSC with a declaration of Andrew Wilson dated February 14, 1997. (RApp. 58-62) In his declaration, Wilson does not mention Armstrong's being served with a subpoena in the *Ward* case, nor does Wilson mention his own letter of January 24, 1997 threatening Armstrong in relation to Ward's subpoena. Armstrong was never served with Scientology's OSC application or the Wilson declaration.

On February 19, 1997 Judge Thomas signed an OSC re contempt, which also was never served on Armstrong.

On June 5, 1997 Judge Thomas filed the order of contempt punishing Armstrong with 2 days in jail and a \$1000 fine for sending the January 26, 1997 declaration to U.S. District Court Judge Whyte. There is no mention in the order of Ward's having subpoenaed Armstrong nor any mention of Wilson's letter threatening Armstrong in relation with that subpoena based on Judge Thomas' injunction. Exs. 8:98-100.

The June 5, 1997 order states:

ARMSTRONG willfully disobeyed the order. On or about January 26, 1997, ARMSTRONG sent a document entitled DECLARATION OF GERALD ARMSTRONG to United States District Judge Ronald M. Whyte. Judge Whyte was at the time presiding over three cases in which the plaintiff is RTC. In the Declaration, ARMSTRONG recites his understanding that he was prohibited from sending such a Declaration directly to litigants and states that he is instead sending it directly to Judge Whyte in the hopes of influencing his decision on a pending matter. This evidences ARMSTRONG's willful disobedience of the Order and Judgment.

Exs. 100. Armstrong sent his declaration to Judge Whyte to report a crime, Wilson's threat to and interference with a subpoenaed witness in the case over which Judge Whyte presided.

18 U.S.C. §1512, "Tampering with a Witness, Victim, or an Informant," states in pertinent part:

(b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to -

- (1) influence, delay, or prevent the testimony of any person in an official proceeding;
- (2) cause or induce any person to -

- (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
 - (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (D) be absent from an official proceeding to which such person has been summoned by legal process; or
- (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;
- shall be fined under this title or imprisoned not more than ten years, or both.
- [...]
- (f) For the purposes of this section -
- (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and
 - (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

It was clear to Armstrong when he received Wilson's January 24, 1997 letter, and it has become ever clearer to Armstrong, that Wilson was threatening Armstrong with the intent to delay or prevent Armstrong from producing the documents Ward had subpoenaed, and that Wilson's threat was a crime. Armstrong therefore was acting properly in reporting that crime to the judge presiding in the case in which Armstrong has been subpoenaed and threatened.

18 U.S.C. §4, "Misprision of Felony," states:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals

and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Thus Armstrong was not only within his lawful rights, which could not lawfully be stripped from him by “contract” or an injunction of the California Superior Court, to report Wilson’s threatening Armstrong to the U.S. District Court, but Armstrong was *required* by 18 U.S.C. §4 to report that crime as Armstrong did as soon as possible.

Ward’s subpoena served on Armstrong stated:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects []:
All documents and declarations authored by yourself documenting abuse, fraud, and unlawful acts by the Church of Scientology Enterprise or any of its investigators, such as Eugene Martin Ingram.

RApp. 10. Armstrong’s January 26, 1997 declaration in which he reported Wilson’s threat was a declaration authored by Armstrong documenting abuse, fraud, and unlawful acts by the Scientology Enterprise and its investigators, such as Eugene Martin Ingram. Once Armstrong had written and signed the declaration it thus became a document of the type that Ward specifically commanded to be produced, and Armstrong was compelled by the subpoena to produce his declaration to Ward.

Judge Thomas’ punishing Armstrong with a jail sentence and fine for sending the January 26, 1997 declaration to Judge Whyte properly reporting a crime and properly responding to Ward’s subpoena itself constitutes a crime against Armstrong, specifically 18 U.S.C. §242, "Deprivation of Rights Under Color of Law," which states in pertinent part:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both.

As Armstrong showed in his statement of the case in his respondent's brief, Wilson and Scientology, seeking the aid of this Court and other courts to punish Armstrong, have filed declarations and other papers in which Judge Thomas' June 5, 1997 order has been quoted, and relied upon to obtain such aid, without ever mentioning Ward's subpoena to Armstrong, Wilson's threatening Armstrong, Armstrong's legitimate right to report Wilson's crime to Judge Whyte; or that Armstrong's crime report by sworn declaration, being a declaration documenting abuse, fraud, and unlawful acts by Scientology, was what Ward had specifically subpoenaed Armstrong to produce.

Wilson and Scientology do the same thing, willfully omitting the same set of vital facts, in their petition to this Court.

7. On February 18, 1997, CSI moved for contempt for Armstrong's violation of the injunction, based on Armstrong's voluntarily filing of a declaration in a case pending in the United States District Court for the Northern District of California on behalf of a party in litigation with a Scientology church. In that declaration, Armstrong stated that the injunction issued by Judge Thomas "is an indicator of Scientology's corruption of the judicial process." On June 5, 1997, Judge Thomas issued an order of contempt, finding that Armstrong "willfully disobeyed the Order." [] Judge Thomas ordered that Armstrong pay a fine of \$1,000 and be confined in the County Jail for two days. Armstrong fled the jurisdiction, and on August 6, 1997, Judge Thomas issued a bench warrant for his arrest.

Petition, 6,7.

Thus not only is Judge Thomas' June 5, 1997 contempt order unlawful, but Wilson's and Scientology's use of that unlawful order that they know to be unlawful, and their omission of the facts known to them that make the order unlawful, also show that their hands in this matter are

unclean, and they should be summarily barred from further pursuing the aid they seek from this Court in their petition. Armstrong's properly reporting a crime and properly responding to a subpoena for production of documents are the "violations" which resulted in the punishment of 2 days in jail and a fine of \$1000, which Judge Duryee discharged and which Scientology and Wilson want this Court to direct her to "reinstate."

B. All the utterances Armstrong made, for which the second and third contempt orders punish him, are his religious expressions of his religious beliefs about a "religion" in the free exercise of his religion, which expressions and exercise are protected by the U.S. Constitution and cannot logically or lawfully be prohibited or punished by a secular court's enforcement of a "contract."

Armstrong has for several years written extensively about his religious beliefs and practice and their relationship and defense to Scientology's "contract" and its judicial enforcement. His most thorough analysis of the application of his right to freedom of religion to the "contract" is contained in his Complaint Report to the U.S. Department of Justice Civil Rights Division February 16, 2004 (RApp. 168-255), which Armstrong incorporates herein in its totality. On the religion issue specifically, see, e.g. RApp. 214-236.

Scientology says it is a "religion," and has obtained a tax exemption from the IRS in acceptance of its claim that it is a "religion" organized for "religious" purposes. For taxation and other strategic reasons, Scientology claims externally to be equal to e.g., Christianity, and to all other religions. Scientology claims internally, or to people in its recruitment process, that Scientology is superior to Christianity and all other religions, that Scientology works and Christ doesn't work, or that Scientology works and nothing else works.

Armstrong is not challenging Scientology's religiosity, and accepts, for all purposes needed herein to oppose Scientology and its petition, that Scientology is a "religion." Armstrong acknowledges that for a period of time he had argued and protested that Scientology could not possibly be a religion, but over the last number of years he has come to accept that in the U.S. a criminal conspiracy or a cult with antisocial, anti-democratic, totalitarian goals, purposes, policies and programs can be a "religion," and will be accorded all the protections and privileges conferred on religions that are not criminal conspiracies and not totalitarian cults with anti-democratic goals. In Germany, by contrast, Scientology is not officially considered equal with Christianity, but is kept under official observation by the German Intelligence Service for its abuse of human rights and its anti-democratic goals.

On November 11, 2004, the Verwaltungsgericht Köln (Cologne Administrative Court) issued a statement of its judgment affirming the official surveillance of Scientology by the German Federal Intelligence Service.

Scientology may be kept under surveillance by Federal Office for the Protection of the Constitution.

The surveillance of the Scientology Kirche Deutschland e.V. by the Federal Office for the Protection of the Constitution [Bundesamt für Verfassungsschutz] that has been conducted since 1997 is lawful. This was declared by the Cologne Administrative Court in its decision pronounced today, thereby dismissing Scientology's suit the aim of which had been to obtain a prohibition order on the surveillance.

The Court stated as reasons for the decision that there were in fact indications pointing to endeavours by Scientology directed against the free and democratic constitutional system. A large number of sources, some of them not accessible to the public, showed that essential basic and human rights, e.g. human dignity, the right to free development of personality and the right to equal treatment,

were to be limited or overridden. Furthermore, Scientology was striving for a society without general and equal elections. These anti-constitutional objectives were even today justifying the continued surveillance by the intelligence service. The fact that Scientology views itself as a church or religious community was no obstacle to the surveillance.

Scientology Kirche Deutschland e.V v. Bundesamt für Verfassungsschutz,
VG Köln 20 K 1882/03.

While Armstrong accepts that Scientology is a “religion,” he simply claims and proclaims that he is equal to Scientology, and because of that equality and because freedom of religious belief and practice is a universal human right and fundamental freedom (see, e.g., 22 U.S.C. § 6401) he cannot lawfully be prohibited from the free exercise of his religion in the U.S. any more than Scientology could lawfully be prohibited from its own free exercise of its “religion.” Armstrong’s religious expressions express the freedom of man, whereas Scientology’s expressions express man’s slavery, but the religious expressions of both Armstrong and Scientology are inarguably religious expressions.

Relevant to the evaluation of Scientology’s evidence and intentions in this appeal and petition is the glaring fact that Scientology, while identifying itself as a “religious corporation,” has made no mention of Armstrong being a religious individual, and made no mention of the utterances, for which Scientology seeks to have him punished by this secular Court and the secular Marin County Court, being his religious expressions of his religious beliefs.

Scientology and Wilson do, however, mock Armstrong’s religiousness.

10. On April 2, 2002, CSI initiated the Related Action for breach of contract against Armstrong, seeking damages for the 131 prior violations, plus an additional 70 breaches. CSI sought compensation under the liquidated damages provision

of the Agreement. [] Armstrong admitted all 201 breaches in his answer to the complaint, which he signed, saying that he did so "at the will of God."

Petition, 8,9.

On April 2, 2002, CSI filed this action for breach of contract against Armstrong, seeking recovery under the liquidated damages provision of the Agreement for 201 additional breaches of the Agreement. [] In his answer, Armstrong admitted all 201 breaches saying that he did so "at the will of God."

AOB, 6.

Scientology and the people serving its purposes have for years also mocked Armstrong's religiousness and taunted him for his religious beliefs in public black propaganda attacks on him.

You're the liar, Gerry. It's a lie that you are a prophet. It's a lie that God speaks to you. It's a lie that you are doing God's work.

You are delusional. Or worse, you may be *pretending* you're delusional.

[...]

The stupidity here is your claiming you do God's work, Garry Armstrong.

[...]

So sue me. Do you have the guts to sue me? I'm sure you don't.

Or will you just continue mewling and puking on usenet?

I'm willing to bet the latter. Anyone willing to bet that

Prophet Gerry will actually be brave enough to back up his words with action?

Excerpt Usenet Black PR Postings, RApp. 141,142.

Here's the post in question. I'm sure Gerry will be glad to point out the "parallel to OSA methods" in it. Funny, I don't see anything remotely OSA-like in it, but then I'm not a Profit of God like Gerry Jihad.

Id, RApp. 144

Armstrong is both saddened and urged on by his attackers' mockery of his religious beliefs. Mockery of religion, of course, is no evidence whatsoever that the mocked religion is not religious.

Individuals serving Scientology's purposes also use the mockery and black PR of Armstrong's religious beliefs to attack and black PR other people. The person referred to as "Grabdough" in the following February 2003 Usenet excerpts is Pastor Thomas Gandow, an ordained minister for 27 years in the Evangelisch Kirche, one of Germany's traditional and largest churches.

How does the Evangelical Church of Berlin-Brandenburg feel about you preaching Armstrong's religion in their churches? Or has Your Prophet[TM] told you that Christians are also antisemi-literatic too?

You must feel so smug and superior, Grabdough. You fool the church-supported government into believing you're a Christian minister while you use their money and their resources to preach the gospel of Gerry Armstrong, your one and only Prophet[TM].

[...]

Strange, I always thought this thread was about Gerry Armstrong.

He IS Your Prophet[TM], isn't he, Grabdough?

[...]

Grabdough's made something of a name for himself attacking anyone and everyone who criticizes his Prophet[TM], Gerry Armstrong.

Id, RApp. 146. See also, RApp. 225-226.

Armstrong is a Christian and a prophet to Scientologists. See, e.g., RApp. 225,226; RApp. 272; AOB-A075027, 49,50; Declaration of Gerald Armstrong dated September 15, 1995, CT-A075027, 5894-5924. There is nothing particularly special or unusual in being a prophet. Theologically, a prophet is someone who brings God's Word to people. A minister, theologically, is someone who brings people's words to God. There are, naturally, overlapping functions, so ministers also bring God's Words, and

prophets certainly can bring people's words to God, as, of course, can everyone else. Armstrong believes that anyone can be called to bring God's Words to others, thus anyone can be a prophet. This belief is not Armstrong's "invention" but scriptural.

And God hath set some in the church, first apostles,
secondarily prophets, thirdly teachers, after that miracles,
then gifts of healings, helps, governments, diversities of
tongues.

Are all apostles? are all prophets? are all teachers? are all
workers of miracles?

Holy Bible, King James Version, I. Corinthians, 12: 28,29

Armstrong knows of no other person called to bring God's Word specifically to Scientologists, so it is altogether reasonable that God would call someone to fill that function. This Court has no authority, it goes without saying, to say that Armstrong is not a prophet, or to say that he cannot be a prophet to Scientologists. The sincerity of his beliefs and his practice is in fact shown by his perseverance in keeping expressing his religious beliefs, despite the onerous monetary penalties and the Fair Game persecution he has been subjected to for years for those expressions by Scientology and persons serving its interests, and despite the court orders punishing him with jail and fines for those religious expressions.

Although Armstrong has done everything in his power to have Scientology and the California secular courts end their persecution of him for his expressions of religious beliefs, he also accepts that persecution is an ironic divine validation of his calling.

And he said, Woe unto you also, ye lawyers! for ye lade men
with burdens grievous to be borne, and ye yourselves touch
not the burdens with one of your fingers.

Woe unto you! for ye build the sepulchres of the prophets,
and your fathers killed them.

Truly ye bear witness that ye allow the deeds of your fathers:
for they indeed killed them, and ye build their sepulchres.

Therefore also said the wisdom of God, I will send them prophets and apostles, and some of them they shall slay and persecute:

Id. Luke 11:46-49

In 1986, Armstrong formed his own Church, and in 2001 named it the Church of Wogs (“CoW”). See, e.g., CT-A075027, 5900; RApp. 272. CoW is an Internet based church with members around the world. There are more than six billion wogs in the wog world, so CoW has an enormous membership base. It is completely pan-denominational, accepting wogs of all faiths, and is akin to the brotherhood of man. Cow’s purpose and function is to defend wogs from Scientology defamation and persecution and to oppose Scientology in its campaigns to invalidate and persecute wogs. (RApp. 234-236) It is true that there is a certain humor in CoW’s acronym and activities, but that is natural because humor is a legitimate, peaceful, God-given “weapon” for opposing persecution and persecutors.

It is also true that CoW appeared and evolved in significant part in response to Scientology persecution, but that appearance and evolution are also natural.

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

22 U.S.C. § 6401. The irony should not be lost on this Court that two centuries after the Nation was founded, Armstrong had to flee abroad to escape Scientology’s religious persecution in the U.S.

One of CoW's tenets is that all of Armstrong's writings about Scientology and wogs form the Church's religious scriptures. Here, Scientology also marked CoW's way by declaring all of L. Ron Hubbard's writings about Scientology and wogs to be that church's "religious scripture." One "religion" marking the way for a later religion, and one set of scriptures leading to another set of scriptures, is a natural historical process as, e.g., Judaism's paving the way for Christianity shows.

This Court, of course, and thankfully for all of us, has no more authority to declare that CoW's scriptures are not its scriptures than the Court has authority to declare that Scientology's "scriptures" are not its "scriptures." Scientology's "scriptures" justify CoW's scriptures not only by their form, but also by their content, because they create the basis for and order Scientologists' persecution of wogs. See, e.g., Scientology "scripture" Hubbard Policy Letter of February 16, 1969 entitled "Battle Tactics," which Armstrong studied inside Scientology. (RApp. 1-3; 241-243; 259-261) In this "scripture," which Scientology reissued after Hubbard's death, he orders a number of aggressive, immoral and criminal actions against wogs whom Scientology declares to be "enemies," also called "Suppressive Persons."⁴

⁴ Scientology founder L. Ron Hubbard ordered, and Scientologists accept as true, that there is a class of citizens called "Suppressive Persons or "SPs," who are the most evil people in the world, destructive, criminal, and deserving no mercy or rights. Hubbard called Scientology's policy for the treatment of SPs "Fair Game," and provided examples and types of Fair Game to be applied to SPs in various policy letters or directives, e.g., 1969 policy letter "Battle Tactics."

Armstrong was in Scientology from 1969 to the end of 1981. Scientology declared Armstrong to be a "Suppressive Person" in early 1982 right after he left the organization. Armstrong has studied Scientology for thirty-five years and has acquired a great deal of knowledge of and experience regarding the "Suppressive Person" doctrine and the philosophy, methodologies and application of, and defense to, Fair Game.

Actions Scientologists are to take against Scientology's SP enemies in compliance with "Battle Tactics" include: expending the maximum of enemy troops; making the war costly; cutting off enemy communications, funds, connections; depriving the enemy of political advantages, connections and power; taking over enemy territory; raiding and harassing; making the enemy attack wrong targets or persons; using standard wartime propaganda; bringing public opinion into a frenzy of hate against the enemy; preserving or increasing the image of Scientology's troops and degrading the enemy's image to beast level; never giving the enemy breathing space; fighting on the basis of total attrition of the enemy; and just going all the way in and obliterating him. RApp. 1-3; 241-246; 259-262.

Hubbard writes that all these belligerent acts are to be done "on a thought plane," but clearly this is a lie to give plausible deniability to what

Armstrong is a founder of the Suppressive Person Defense League ("SPDL"), dedicated to uniting SPs, defending SPs against beastification, attack and menace, and bringing SPs to stand up to Scientology. Suppressive Persons form a religious class and minority persecuted by Scientology, Scientologists and their agents. Armstrong believes that to prevent him, a declared SP, from assisting his own people and class against being beastified, attacked, menaced and obliterated by Scientology is no different than preventing a Jew from assisting his own people and class against being beastified, attacked, menaced and obliterated by, e.g., a Nazi cult. Armstrong and his wife Caroline, whom Scientology also declared a "Suppressive Person," maintain an SPDL web site to assist SPs, defend them against Scientology persecution, and oppose the persecutors. RApp. 171, 172, 177, 179, 186-188, 195, 224, 237-243, 248-254; 258-262, 272. Re: "Fair Game" and the "Suppressive Person" doctrine, also see, e.g., *Allard v. Scientology*, (1976) 58 Cal. App. 3d 439, 129 Cal. Rptr. 797; *Wollersheim v. Scientology* (1989) 212 Cal.App.3d, 872; *Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917; *Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628.

he is ordering.⁵ Depriving people of political advantages, connections and power, generating wartime propaganda, degrading people's images to beasts, making the war costly on them, and achieving people's total attrition are not done "on a thought plane," but in the real world to real people. Scientology has not attacked SP Armstrong "on a thought plane," but in the real world using real world justice systems to harass him, filing real lawsuits in real courts, threatening him with real threats, assaulting him with real assaults, and now herein seeking to strip him of his real human rights, and punish him for fighting back, or even protesting.

Hubbard also writes in "Battle Tactics" that the "enemy" sought Scientology's total destruction, had waged barbarian warfare, and fought for total attrition. But the people that Scientology wars upon in execution of its "Suppressive Person" doctrine have never done any of those things. That is a complete invention by Hubbard, either out of paranoia or malice,⁶ to incite Scientologists to wage a war against the good, loving people he declared "enemies."

The people that Scientology wages its war of total attrition on are in most cases those who might simply stand up and say, Scientology, stop expending people, stop bankrupting people, stop trying to cut off our communications, our connections and our funds, stop trying to overwhelm people, stop grabbing stuff, stop raiding and harassing, stop your lies, stop the black PR, stop the hate campaigns, stop degrading people, or stop

⁵ In his June 20, 1984 decision, affirmed on appeal, Judge Breckenridge stated about Hubbard: "The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements." CT-A075027, 5955-5956.

⁶ Judge Breckenridge also stated about Hubbard, and Scientology: "The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH." CT-A075027, 5955.

obliterating people. Good people who do stand up and oppose Scientology's war on good people become Scientology's targets for total attrition and obliteration.

For some of those certainly who stood up and have been combating Scientology in its war on SPs, or good people, for a while, the war has molded them and become a holy endeavor. Hubbard makes it very clear in "Battle Tactics" that the war that he was commanding his Scientology troops to wage, finance, and keep going all these years really is war.

Never treat a war like a skirmish. Treat all skirmishes like wars.

RApp. 2.

The undeniable fact that Scientology *organizes* its troops to wage this war of total attrition on good people makes this "church" a criminal conspiracy. What Scientology has been trying to do to Armstrong using the California courts in its war is so obviously an organized, Scientology-wide campaign to strip him of his basic human rights, including his right to defend himself in the war being waged upon him, that the campaign and the campaigners are in obvious violation of U.S. Civil Rights criminal statutes. Concluding that what Scientology is doing with Armstrong is a crime, specifically a violation of 18 U.S.C. §241, has only encouraged him to continue to communicate, as it would anyone, prophet or not.

The First Amendment to the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

There can be no doubt that all of Armstrong's utterances for which Scientology wants \$50,000 per utterance and wants Armstrong jailed and fined, whatever else they may be, are his religious expressions of his

religious beliefs, which, as guaranteed by the First Amendment cannot be prohibited. Religious expressions of his religious beliefs are Armstrong's free exercise of his religion, his religious practice. This opposition too, although it also serves an obvious secular purpose, is his religious expression of his religious beliefs.

Scientology's 23 years of persecution of Armstrong certainly contributed to the path of religious freedom Armstrong has taken. Scientology's war has brought him to a deep appreciation of religious liberty, to study and understand religion and religious freedom in relation to Scientology and its war, and to fight as tenaciously as he has these years for his freedom. He knows Scientology cannot lawfully deprive him of his religious liberty, and also that what was done by Judge Thomas in the Marin Court depriving Armstrong of his religious freedom and his defense of religious freedom, and then ordering Armstrong jailed and fined was also not lawful. This knowledge too has only encouraged Armstrong to continue to freely exercise his religion by the expression of his religious beliefs.

As Armstrong has stated hundreds of times in hundreds of ways, it is inconceivable that any court in the U.S. would enforce a "contract" that prohibited a person from expressing his religious beliefs about Christianity, or saying the words "God," "Christ" or "Christianity" or discussing his religious experiences in the Christian religion. It is even more inconceivable that a court in the U.S. would award a "church," pursuant to such a contract, \$50,000 each time the person expressed his religious beliefs about Christianity. It would be a judicial horror to send a person to jail and fine him for disobeying a court order that prohibited him from expressing his religious beliefs about Christianity.

Since silencing someone about Christianity by judicial enforcement of a "contract" is inconceivable, silencing a person about Scientology, which puts itself on at least an equal footing religiously with Christianity,

must be equally inconceivable. Scientology should be told by this Court and by every court where Scientology takes its “silence contracts” to be enforced that the enforcement it seeks is inconceivable. Judge Duryee said essentially that when she ruled that the liquidated damages clause in Scientology’s “contract” is unconscionable.” Exs. 16:350;18:361.362. Judge Duryee’s judgment too, of course, has encouraged Armstrong to continue to express his religious beliefs about the Scientology “religion.”

Scientology chose to call itself a “religion,” and to seek all the protections and benefits that are conferred on religions. No one forced Scientology to call itself a “religion,” and Scientology has not claimed that it was forced to become a “religion.” If Scientology had not called itself a “religion,” conceivably, setting aside all other reasons why not, Scientology might be able to lawfully enforce a contract that prohibited a person from expressing his non-religious beliefs about his non-religious experiences with that imaginary non-religion Scientology organization. But because Scientology chose to be a religion it must not and cannot lawfully prohibit people’s expressions of their beliefs about that religion. Otherwise there is no freedom of religion; which of course there is as the First Amendment states and guarantees.

Either Scientology must be prohibited from using the law, as it is doing with Armstrong, to deprive him of his religious freedom, or the law that “lawfully” permits Scientology to deprive him of his religious liberty must be repealed. If Scientology is doing what it is doing to Armstrong pursuant to law, then that law was made in violation of the First Amendment that prohibits such a law from being made.

There are no senior interests here, or in relation to any of Armstrong’s religious expressions, of public safety, order, morality or the protection of the rights and freedoms of others. Armstrong’s expressions are not libels, but the truth as he knows it, his sincerely held beliefs about a

“religion,” about religion, about belief, and about a million other things in which he has been given beliefs.

C. Virtually all of Armstrong’s religious expressions of his religious beliefs for which Scientology wants this Court to order the Marin Court to assess him \$50,000 per expression and to jail and fine him were made outside the U.S., and pursuant to the International Religious Freedom Act of 1998, the U.S. President and Government must defend Armstrong’s right to express his religious beliefs about the Scientology “religion” outside the U.S. and must oppose Scientology’s use of the California courts to threaten, suppress and destroy that right.

Of the 147 separate expressions of Armstrong’s religious beliefs that are considered by the three contempt orders and Scientology’s effort to enforce the liquidated damages clause of its “contract,” only 3 were expressed in the U.S.: Armstrong’s declaration of January 26, 1997, which he sent to Judge Whyte reporting attorney Wilson’s threat, and produced pursuant to subpoena; and the two talks he gave about his religious beliefs in Florida in December 1999. The other 144 expressions under consideration here were made by Armstrong in Canada or in Europe.

As he has stated many times, and Scientology has repeated many times in its efforts to judicially enforce its “contract,” Armstrong has made several thousand Usenet postings of his religious beliefs about Scientology, all of which he made either in Canada or Europe. Armstrong has also expressed his religious beliefs many thousands of times in other ways: in person, by telephone, by e-mail, by picketing Scientology operations, and by webbing his expressions on his web sites. Almost all of those expressions of his religion and religious beliefs were also made in Canada or Europe. The only time Armstrong has been in the U.S. since a brief visit

in 2001 was to travel to Marin County in April this year to attend his trial, and naturally he did express his religious beliefs about Scientology during the trip for the trial. But the vast majority of Armstrong's expressions of his religious beliefs about the Scientology "religion" were made outside the U.S., and he will continue to express his religious beliefs, as he has been doing, outside the U.S.

The International Religious Freedom Act of 1998 ("IRFA") has been incorporated into the U.S. Code as Chapter 73 of Title 22, "International Religious Freedom." 22 U.S.C. §§ 6401-6481. §6401 states:

(a) Findings

Congress makes the following findings:

(1) The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

(2) Freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(3) Article 18 of the Universal Declaration of Human Rights recognizes that "Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest

his religion or belief in teaching, practice, worship, and observance." Article 18(1) of the International Covenant on Civil and Political Rights recognizes that "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching". Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government.

(4) The right to freedom of religion is under renewed and, in some cases, increasing assault in many countries around the world. More than one-half of the world's population lives under regimes that severely restrict or prohibit the freedom of their citizens to study, believe, observe, and freely practice the religious faith of their choice. Religious believers and communities suffer both government-sponsored and government-tolerated violations of their rights to religious freedom. Among the many forms of such violations are state-sponsored slander campaigns, confiscations of property, surveillance by security police, including by special divisions of "religious police", severe prohibitions against construction and repair of places of worship, denial of the right to assemble and relegation of religious communities to illegal status through arbitrary registration laws, prohibitions against the pursuit of education or public office, and prohibitions against publishing, distributing, or possessing religious literature and materials.

(5) Even more abhorrent, religious believers in many countries face such severe and violent forms of religious persecution as detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death merely for the peaceful belief in, change of or practice of their faith. In many countries, religious believers are forced to meet secretly, and religious leaders are targeted by national security forces and hostile mobs.

(6) Though not confined to a particular region or regime, religious persecution is often particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities.

(7) Congress has recognized and denounced acts of religious persecution through the adoption of the following resolutions:

(A) House Resolution 515 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives with respect to the persecution of Christians worldwide.

(B) Senate Concurrent Resolution 71 of the One Hundred Fourth Congress, expressing the sense of the Senate regarding persecution of Christians worldwide.

(C) House Concurrent Resolution 102 of the One Hundred Fourth Congress, expressing the sense of the House of Representatives concerning the emancipation of the Iranian Baha'i community.

(b) Policy

It shall be the policy of the United States, as follows:

(1) To condemn violations of religious freedom, and to promote, and to assist other governments in the promotion of, the fundamental right to freedom of religion.

(2) To seek to channel United States security and development assistance to governments other than those found to be engaged in gross violations of the right to freedom of religion, as set forth in the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], in the International Financial Institutions Act of 1977, and in other formulations of United States human rights policy.

(3) To be vigorous and flexible, reflecting both the unwavering commitment of the United States to religious freedom and the desire of the United States for the most effective and principled response, in light of the range of violations of religious freedom by a variety of persecuting

regimes, and the status of the relations of the United States with different nations.

(4) To work with foreign governments that affirm and protect religious freedom, in order to develop multilateral documents and initiatives to combat violations of religious freedom and promote the right to religious freedom abroad.

(5) Standing for liberty and standing with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples.

The Armstrong case identifies Scientology as one of the participants in the renewed and increasing assault on the right to freedom of religion around the world. Scientology's is a new type of assault, using unconscionable "contracts" concocted by clever lawyers and enforced judicially by virtue of Scientology's overwhelming wealth, and determination to use the courts to achieve the unconscionable. It is, nevertheless, an assault on the right to religious freedom that fits squarely under the IRFA, and Armstrong, that assault's victim, seeks the protection the Act promises.

That the IRFA is intended to protect Armstrong as a religious individual from Scientology's organized efforts to deprive him of his religious freedom is shown in subsection (a)(3) that specifically acknowledges that religious freedom is equally for a person "alone or in community with others." Armstrong, as already stated, is also the founder and a member of the Church of Wogs, and his religious freedom in community with wogs is also protected by the act.

The drafters of the act obviously recognized, as Armstrong has recognized, that for religious freedom to exist people must be free to change their religion or beliefs. Because of his absolute right to change

religion or beliefs, and consequently his expressions of those religious beliefs, a person cannot be bound by “contract” to a particular form of religious expression, or prohibited from a particular form of religious expression, as Scientology is attempting to do with Armstrong. This right to change religion and beliefs, and consequently and necessarily to change expression of those beliefs, also must be an exception to the principles of *res judicata* and collateral estoppel when orders or judgments limiting or prohibiting religious expression are involved, as they are in this case.

The IRFA’s drafters also considered public and private manifestations, or expressions, of people’s religions and religious beliefs, and declared both private and public necessary for religious freedom. This inclusive distinction is important to the Armstrong case because virtually all of his expressions of his religious beliefs for which Scientology is trying to have him penalized \$50,000 per expression, plus jailed and fined, are public expressions of his religious beliefs. Scientology’s first step is to stop Armstrong from publicly expressing his beliefs, and punish him for having done so, of course. Scientology’s second step would be to stop Armstrong from expressing his religious beliefs privately.

Scientology’s “contract” prohibits *both* public and private expressions of Armstrong’s religion and religious beliefs. It permits Armstrong only to express his religious beliefs to “members of his immediate family.” The “contract” also permits Armstrong to listen to another person expressing his or her religion or his beliefs only if that person is an immediate family member. Obviously such onerous, unconscionable restrictions on religious expression were what the IRFA drafters considered when they declared that free religious expression must be safe and unpunished in private *or* in public.

The activities the IRFA mentions as manifestations of a person’s religion or belief, “teaching, practice, worship, and observance” are truly

what Armstrong does in his religious life. He teaches in everything he writes and says publicly in expression of his religious beliefs. His words must be providing some kind of teaching when people are saving \$50,000 each utterance he makes. His expressions of his religious belief are an essential part of his religious practice. Being a believer, he worships as much as humanly possible every waking hour. And he could not have carried on in Scientology's war on him these years without observance.

The IRFA not only identifies and condemns government-sponsored religious freedom violations, but government-*tolerated* violations. What Scientology is trying to do in punishing Armstrong for his expressions of his religious beliefs is government-tolerated persecution. At this time, Scientology's violations of Armstrong's religious freedom are being tolerated by Canada, so Armstrong is doing what he can to get Canada to stop tolerating Scientology's violations of Armstrong's and others' religious freedom.

The U.S., obviously, is put in a difficult position because the Government for many years, at the highest levels, has tolerated Scientology's violations of people's religious freedoms. U.S. courts have at times not only tolerated Scientology's violations of religious freedom but have abetted them, and thus given them a gloss of legality. The U.S. Government's open tolerance of Scientology's religious persecution of people, and grant of tax exemption to Scientology in 1993, enabling an escalation of its war against the people it wanted persecuted, give Scientology's violations of people's religious freedom the *appearance* of government sponsorship.

The U.S. Government, from the President on down, is, however required to address Canada's tolerance of Scientology's violations of religious freedom, and to work toward cessation of that tolerance and of the violations of religious freedoms that the tolerance tolerates. The only way

the U.S. Government can do what it is required to do by its own law is to end its own tolerance of Scientology's religious freedom violations, and instead condemn those violations. *Scientology v. Armstrong* is a great case to start.

Scientology's state-tolerated slander campaigns must be as terrible as state-sponsored slander campaigns. It has special divisions of "religious police," including some that run its litigation teams that use the law to violate people's religious freedom, as is being done here with Armstrong. Scientology seeks to deny Armstrong the right to assemble by penalizing him \$50,000 in liquidated damages for "picketing." See, e.g., "Armstrong Breaches," attachment to Scientology's complaint in the trial court, Exs. 14:208, nos. 174-176; 14:209, nos. 185, 187, 189, 193, 195, 196; 14:210, nos. 198-201, 203. Scientology sought by its complaint \$700,000 for these 14 pickets. Certainly Scientology here seeks to prohibit Armstrong from publishing, distributing, or possessing religious literature and materials, including religious literature he authored, and to punish him for having done so.

Imprisoning people for their expressions of their religion or beliefs, which Scientology is attempting herein, is listed as a severe form of religious persecution, along with crimes like torture, beatings and enslavement. Arguably, Scientology's "contract" is a slave contract creating with its utter one-sidedness a condition of slavery.

22 U.S.C. §6402, "Definitions," (13) states:

(13) Violations of religious freedom

The term "violations of religious freedom" means violations of the internationally recognized right to freedom of religion and religious belief and practice, as set forth in the international instruments referred to in section 6401 (a)(2) of this title and as described in section 6401 (a)(3) of this title, including violations such as--

(A) arbitrary prohibitions on, restrictions of, or punishment for--

(i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements;

(ii) speaking freely about one's religious beliefs;

(iii) changing one's religious beliefs and affiliation;

(iv) possession and distribution of religious literature, including Bibles; or

(v) raising one's children in the religious teachings and practices of one's choice; or

(B) any of the following acts if committed on account of an individual's religious belief or practice: detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, and execution.

The violations of Armstrong's religious freedom as listed in the IRFA that Scientology is attempting to enforce with its "contract" include prohibition and punishment for assembling; speaking freely about his religious beliefs; changing his beliefs and affiliation; and possession and distribution of religious literature. The acts that Scientology seeks to have committed on account of Armstrong's religious practice as listed in the IRFA include interrogation, imposition of an onerous financial penalty, imprisonment and enslavement. Scientology's onerous financial penalty, \$50,000 per expression of Armstrong's religion or his beliefs, is what Judge Duryee adjudged unconscionable.

The rest of the IRFA specifies what actions the President, State Department and other U.S. departments are to take to promote religious freedom outside the U.S. and specifies the sanctions that are to be applied to nations that violate religious freedom, or, like Canada in the Scientology case, tolerate violations of religious freedom.

Realistically, this Court cannot punish a person for expressions of his religion or his religious beliefs made somewhere else in the world. But

more importantly, this Court also has a duty to promote religious freedom outside the U.S. and to prevent violations of religious freedom in alignment with the IRFA when a case involving religious freedom in a foreign country is before it, which it is now.

II The subject contempts are civil, not criminal, and not offenses against the Court's dignity

As Armstrong also identifies in his respondent's brief, three times in its petition, as written by attorney Wilson, Scientology states the contempt orders against Armstrong are for "criminal contempt."

The Court did not explain how a fine for criminal contempt payable to the court can be "concurrent" with a civil judgment for damages payable to a party. Nor did it explain how an appearance in court is the equivalent of serving a five-day jail sentence.

Petition, 12

19. The Superior Court committed clear legal error in holding that a compensatory damages judgment in the Related Action for different violations of the contract and permanent injunction can satisfy orders of criminal contempt in the Action.

Petition, 13

In the First and Second Orders of Contempt, Judge Thomas found Armstrong guilty of contempt and sentenced him to fines totaling \$3,600 and 28 days of confinement. In the Third Order of Contempt, Judge Duryee sentenced Armstrong to a \$1,000 fine and five days of confinement. These sentences were criminal contempt sanctions.

Petition, 19

Wilson knew very well that the contempt orders in this case are not for criminal contempt but for *civil contempt*. The bench warrants that followed the contempt orders that Wilson calls "criminal contempt" were

prepared by him and state very clearly that the matters are “civil.”

Exs.9:101; Exs.11:108.

The reason Wilson and Scientology are calling the civil contempts “criminal,” aside from the desirability for black PR purposes, is that Wilson and Scientology need the contempts to be “criminal” to get this Court to punish Armstrong with the jail sentences and fines that Judge Duryee discharged. That Wilson and Scientology have to resort to such chicanery, to telling lawyer lies to get Armstrong punished, not only shows how baseless their petition is but gives this Court grounds to send them packing.

Black’s Law Dictionary, citing the Federal Rules of Criminal Procedure, distinguishes between civil and criminal contempt:

Contempts are also classed as civil or criminal. The former are those quasi contempts which consist in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are acts done in disrespect of the court or its process or which obstruct the administration of justice or tend to bring the court into disrespect. A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued, and a fine is imposed for his indemnity. But criminal contempts are offenses or injuries offered to the court, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment.

Fed.R.Crim.Proc.42.

Black’s Law Dictionary, 5th Ed.

If Scientology acknowledged that the contempts against Armstrong were civil, it wouldn’t be able to assert, as it does, that the contempt orders’ “purpose was to “vindicate the dignity [and] authority of the court.” Petition, 19. Scientology wouldn’t also support its effort to get Armstrong jailed and fined with an argument that “enforcement of an order of contempt in this state is not for the vindication of a private right but is for

the maintenance of the dignity and authority of the court, and to preserve the peace and dignity of the people of the State of California.” Petition, 22.

Armstrong’s contempts were acts done not in disrespect of the court or its process and did not obstruct the administration of justice. In fact, he has done whatever he possibly could, in very difficult conditions and while the target of great persecution and injustice, to participate properly in the court process. It is true that he disobeyed the Marin Court’s injunction on many occasions, and he continues every day to disobey it. But the terms of the injunction that he violates are unlawful, and there can be no lawful requirement that he obey an unlawful order. Judge Duryee has gone a long way toward validating Armstrong’s position regarding the injunction’s unlawfulness with her judgment that the liquidated damages provision is unconscionable, and further by bringing Scientology to acknowledge that her judgment “immunize[s Armstrong] from any future liability for breaching a contract he admits having breached well over 200 times, has been adjudicated to have breached 137 times, and which he vows to continue to breach indefinitely in the future.” AOB,1.

Armstrong’s actions have not brought the court into disrespect. The Marin Court’s actions have been discussed around the world, and some of its actions, being unlawful or in violation of Armstrong human rights, including his religious freedom, have brought the U.S. and its courts into disrespect. But that is the proper respectful action of someone attempting with what negligible resources he has to correct an international injustice. The U.S.’s respectful response to the disrespect it garners for tolerating Scientology’s persecution of good people, including violations of their religious freedom, is to end that toleration.

All of Armstrong’s contempts were committed outside the presence of the court and were not against the dignity of the court, but against Scientology. Armstrong failed to not express his religion and his religious

beliefs, and the court's injunction that ordered him to not express his religion and his religious beliefs was for the benefit and advantage of Scientology. Scientology admits this, out the other side of the mouth that labeled the contempts "criminal," in order to give itself standing as a "a party beneficially interested in the ruling." Scientology says:

petitioner has standing because "an indirect civil contempt is an action to protect the rights of a party to the litigation . . . and not simply a proceeding to preserve the power of the court." [] CSI was the beneficiary of the injunction, which was issued to protect its contract rights.. This interest is more than sufficient to confer standing.

Petition, 17,18.

Scientology cannot have it both ways. Armstrong's contempts were civil, not criminal, and the dignity of the court, which Scientology claims to be upholding by getting this Court to order the Marin Court to jail and fine Armstrong, after discharging his sentences, was obviously not assaulted or even bothered by Armstrong's actions, and in fact credited him for his appearance in Court. Armstrong and his wife traveled by Greyhound bus from British Columbia to Marin County, with warrants outstanding for his arrest, to appear in Court for trial and to take care of the contempt orders against him.

After Judge Duryee discharged the first two contempt orders and jail sentences against Armstrong, Wilson still pressed her to jail him.

The only way that the church can get any satisfaction, or has any chance of having Mr. Armstrong stop this is for the court to tell him we're serious. We ordered you to stop, we meant it. Stop. Go to jail. Do not pass go. Do not collect \$200. He needs to be put in jail not because he spoke out, because he thumbed his nose at the court.

Exs. 16:353,

Attorney Ford Greene, who represented Armstrong at trial responded in Armstrong's defense.

I would, in response to Mr. Wilson's comments, say that by the fact of Mr. Armstrong's appearance here shows that he's not thumbing his nose at anybody. He's here because he recognizes the seriousness of the proceeding. He came from Canada to Marin County knowing that there were the prior contempt citations. He's not a scofflaw, or some sort of bad guy. He is a man of principle.

Exs. 16:353 Judge Duryee, who just prior to trial had read a great amount of Armstrong's facts and argument in his opposition to Scientology summary judgment motion (RApp. 1-7; 10-57; 133-153; 166-299) agreed with Greene.

A few minutes later, Wilson pressed her to impose a sentence on the Judge Smith's July 13, 2001 contempt order.

So if I can take a third bite at the apple. Sentence him on that one. Something.

Exs. 16:356. Judge Duryee ruled:

All right. So on the order of contempt issued July 13th, 2001, the court sentences you to five days in jail and a fine of \$1,000. The fine is -- the fine is concurrent with the judgment that's been rendered in this action and the jail time is deemed served by your appearance in court here today.

Exs. 16:357

It is clear that Judge Duryee did not find that Armstrong was thumbing his nose at the Court, and did not view Armstrong's many contempts as acts against the dignity of the Court. Scientology's holding itself out as the upholder of the Court's dignity in this matter merits considerable disrespect.

III There are significant mitigating circumstances that justify the Marin Court's discharge of the earlier imposed civil contempts

As Scientology says, “where there are mitigating factors, remission may be appropriate.” Judge Duryee remitted the jail sentences against Armstrong and made the fines part of the \$500,000 punishment she inflicted.

The Court didn’t want the money that might be squeezed out of Armstrong. She gave the fines to Scientology as part of their getting their money back. Any punishment, even a dollar, however, beyond the \$500,000, she said, would be unconscionable. So the fines had to be made concurrent with the judgment.

As to the remission of the jail sentences, there is not only a range of mitigating factors, there are also exculpatory factors. The biggest factor is that the judge’s conscience was shocked to the point that she declared what Scientology was trying to do, beyond the award of its money back, unconscionable. It is moreover stronger than implication that she found even more in Scientology’s “contract” than the liquidated damages clause to be unconscionable. She pointed out its one-sidedness, *and* she remitted the jail sentences. Unconscionability mitigated, or more truthfully, justified the remission of the sentences. And the remission of the sentences validates the unconscionability judgment because it is the lawful and just thing to do if a judge whose conscience had been shocked had these sentencing matters before her.

The first contempt is so unlawful that Mr. Wilson should be prosecuted for what he did to obtain that order, and for what he has done thereafter with that order to abuse Armstrong and the legal process on behalf of his Scientology client. The undeniable unlawfulness of the first contempt order would be an exculpatory, not a mitigating factor. Judge Duryee had all the facts necessary to know the first contempt order is unlawful from Armstrong’s opposition to summary judgment, before her just before the trial. RApp. 267-270.

It would be a mitigating factor to any judge with good sense that Armstrong's expressions for which Scientology wanted him jailed, and penalized \$50,000 per expression, were his religious expressions of his religion and his religious beliefs. Judge Duryee had also read about Armstrong's determination to keep expressing that religion and those beliefs. RApp. 271,272. And she had the whole case file going back twelve years, which is filled with Armstrong's proclamations of his right to express his religion and his beliefs as he is called.

Among all the other mitigating factors that Judge Duryee could see, it was a mitigating factor to her, mentioned by her, that Armstrong showed up. Sometimes it's good to show up.

IV Scientology has unclean hands

The facts necessary to come to an unclean hands adjudication have all been presented in respondent's brief or in this opposition. Wilson, on behalf of Scientology, at a minimum, willfully withheld facts from Judge Thomas to obtain the contempt order of June 5, 1997 against Armstrong, who was then living in Canada, and never served. The facts Wilson withheld concerned his own crime of threatening Armstrong, who had been subpoenaed in another Scientology case. Armstrong had a right and a duty to report Wilson's threat to the Federal Judge as Armstrong did.

Wilson used the June 5, 1997 contempt order to improperly get Armstrong's appeal from the Marin Court's 1996 judgment dismissed in this Court, and has used it in several subsequent legal proceedings against Armstrong.

People serving Scientology's purposes have used the order to black PR Armstrong around the world. Scientology even used it to try to get Armstrong in trouble with a host of Russian Government Officials including the Russian Federal Intelligence Service, and used it to try to Armstrong picked up by American agents in Russia. RApp. 221,222.

Wilson has repeated his falsehoods far too many times, and repeats them here in his brief and petition, about when Armstrong left California. Wilson links Armstrong's departure to Armstrong's being found in contempt or a warrant being issued for his arrest, and Wilson cannot but know that what he has been saying, and says in his petition, is patently untrue.

Wilson has told many untruths about Armstrong in many legal documents and in public statements, a set of which in the record he has identified in his brief and this opposition.

Wilson is a beneficiary of Scientology's unconscionable "contract.

V Law should not countenance an absurdity

The numbers and the dollars involved in this matter are intergalactic. \$50,000 per expression of his religion or beliefs makes Armstrong easily the most valuable being on the planet. He has made easily hundreds of thousands of religious expressions of his religious beliefs about the Scientology "religion," generating easily billions of dollars.

Attorney Wilson stated at the April 9, 2004 trial that Armstrong *had* breached the "contract" zillions of times and told the Court that Armstrong *was* breaching it zillions of times. Exs.16:319. The amount Armstrong would have to pay Scientology, therefore, if its unconscionable liquidated damages clause is not limited as Judge Duryee has done, would be fifty thousand zillions dollars.

Not only would fifty thousand zillions dollars be Armstrong's liability, however, it must also be viewed as Armstrong's value, or the value of zillions of his religious expressions. But Judge Thomas ruled that this valuation for Armstrong's religious expressions was per recipient of each expression. See, order of summary judgment dated October 17, 1995, Exs. 83, also quoted in Scientology's opening brief. AOB, 4. The 18 letters for which Judge Thomas agrees that Scientology is due \$900,000 in

liquidated damages, are 18 recipients of the single letter. The letter itself is part of the record in Armstrong's appeal from Judge Thomas' judgment. CT-A075027, 525-534.

By creating copies of his expressions of his religion or beliefs, Armstrong, with very little effort, could generate expressions worth quadrillions of dollars. There is really no limit to the value of the expressions Armstrong can generate.

This arithmetic also makes it glaringly obvious that Scientology criminally cheated Armstrong monetarily in its 1986 "settlement." Scientology makes a big deal of paying Armstrong \$800,000, and it might sound like a lot of money, until Armstrong's real value is accurately considered.

Armstrong can generate \$800,000 in religious expressions in a few seconds work.

As Scientology says, Judge Duryee has immunized Armstrong from any future liability for breaching a contract he admits having breached well over 200 times, has been adjudicated to have breached 137 times, and which he vows to continue to breach indefinitely in the future. AOB, 1

Now is the time for Scientology to honestly negotiate a new "contract" with Armstrong. There was absolutely no negotiation the first time around, and all of this abusive and unconscionable litigation resulted. Scientology should propose to Armstrong a reasonable amount to compensate him, for an honest calculation of his potential expressions of his religion times the recipients he could reach. Armstrong has proposed sextillions of dollars in his summary judgment opposition as a good starting figure. RApp. 264-266.

The math also must be done for the jail sentences and fines. The first sentence for the first contempt was two days in jail and a \$1000 fine for one expression. The second sentence was 26 days in jail and a fine of

\$2,600 for 13 expressions of Armstrong's religion or beliefs, or 2 days in jail for each expression and a fine of \$200 for each expression. The third sentence for 131 expressions of Armstrong's religious beliefs was five days in jail and \$1000 fine, or 55 minutes jail time and \$7.63 fine per expression.

Anyone with any math sense at all can recognize that to keep those figures going and get out from underneath any threat of jail time or fines Armstrong must generate ever more religious expressions of his religion and his religious beliefs.

CONCLUSION

Armstrong is an ordinary, common person. He has been persecuted by Scientology for years in a most extraordinary, uncommon way.

His legal situation cries out for justice. Enormous human rights issues and a global public controversy are involved.

Scientology's and attorney Wilson's hands are unclean in the transaction before this Court, and should not be given the "relief" they urge the Court by writ petition to give them.

Armstrong has stated in his respondent's brief that he believes Scientology must submit to an evidentiary hearing on the circumstances when the "contract" was made, and Armstrong requests such a full hearing, indeed a trial.

He therefore asks this Court to deny Scientology's petition and to send this case back to the Marin Court to conduct a hearing.

Alternatively, this Court may act as it is allowed by law to end this litigation abuse by Scientology once and for all.

Dated: December 7, 2004

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CERTIFICATE OF LENGTH

Pursuant to Rule 14(c)(1) of the California Rules of Court, respondent Gerry Armstrong certifies that the number of words in this brief, according to the word count of the computer program used to prepare the brief, is 13,345 words.

Gerry Armstrong